

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Application of
STENN ASSETS UK LIMITED,

Case No. 20 Misc. _____

For an Order Pursuant to 28 U.S.C. § 1782 to Conduct
Discovery for Use in Foreign Proceedings

**DECLARATION OF MICHELLE J. MARTIN IN SUPPORT OF
EX PARTE APPLICATION FOR DISCOVERY PURSUANT TO 28 U.S.C. § 1782**

I, Michelle J. Martin, pursuant to Title 28 U.S.C. § 1746, hereby declare under penalty of perjury as follows:

1. I am an associate at the law firm of Kellner Herlihy Getty & Friedman LLP, New York counsel for Applicant Stenn Assets UK Limited (“Applicant”), and am duly admitted to practice before the United States District Court for the Southern District of New York.
2. I respectfully submit this Declaration in support of the application for judicial assistance pursuant to 28 U.S.C. § 1782, seeking an order authorizing intermediary bank discovery from The Clearing House Payments Company, LLC (“TCH”) and certain banks found in this District, for use in a contemplated foreign arbitration proceeding under the auspices of the Dubai International Financial Centre-London Court of International Arbitration (“DIFC-LCIA”) by Applicant against Arion Metals FZE (“Arion”) to recover a debt in the amount of USD 1,083,166.74 (the “Debt”) owed by Arion to Applicant (“Contemplated Arbitration proceeding”).
3. I submit this Declaration to provide the Court with information relevant to the requested discovery, the entities found in this District from which discovery is sought, and a basic understanding of the bank’s system that process and maintain records concerning U.S. Dollar denominated wire transfers.

The Requested Discovery

4. Applicant seeks to obtain meaningful information from banks located in this District that are in the business of processing U.S. Dollar denominated wire transfers in New York City, and will have processed wire transfers relevant and probative to plead and prove Applicant's Claims that Arion breached the Agreements, and dissipated and misappropriated assets that should have been used to satisfy the Debt owed to Applicant. (Fox Decl., ¶27).

5. Applicant seeks discovery from Citibank, N.A., The Bank of New York Mellon, Société Générale, New York, HSBC Bank USA, N.A., BNP Paribas USA, JPMorgan Chase Bank, N.A., Barclays Bank PLC, Deutsche Bank Trust Co. Americas, Bank of Nova Scotia, UBS AG, Bank of America, N.A., Standard Chartered Bank US, Commerzbank AG US, (collectively, the "New York Banks") and TCH (collectively, the "Respondents") (*Id.*, ¶ 25).

6. The Declaration of James Fox submitted in support of the Application (the "Fox Declaration") explains at length how records relating to wire transfers obtained from the New York Banks and TCH would be useful in the Contemplated Arbitration Proceeding. It explains that "the U.S. Dollar-denominated wire transactions routed through New York City and documents relating thereto, will reveal the information sought by Applicant to advance its Claims in the Contemplated Arbitration Proceeding — namely, transactions of value made with funds that should have been used to satisfy the Debt owed to Applicant. Accordingly, the evidence sought is critical to plead and prove Applicant's Claims." (*Id.*, ¶28).

7. The Fox Declaration also explains that "the discovery sought from the Respondents is evidence of wire transfers routed through the Respondents in New York City revealing the complete picture of Arion and Rao's movement of funds, and the identity of all

entities or individuals that appear to have engaged in suspicious transactions with Arion and may have assisted Arion in dissipating and misappropriating its assets.” (*Id.*, ¶28).

8. The discovery sought in this proceeding directly relates to the Respondents’ U.S. Dollar clearing business in this District—namely, U.S. Dollar denominated wire transfers for which the Respondents were involved as originating bank, beneficiary bank, intermediate or correspondent bank to CHIPS, Fedwire, or where the Respondents otherwise facilitated interbank funds transfers, as well as documents relating thereto. (*Id.*, ¶30). As set forth below, each of the Respondents reside or is found in this District.

The Respondents Reside or Are Found Within This District

9. Based on my personal experience, and my firm Kellner Herlihy Getty & Friedman LLP’s experience in obtaining bank account and U.S. Dollar denominated wire transfer records in numerous cases including in this Court, the New York Banks act as correspondent or intermediary banks in this District for U.S. Dollar denominated wire transfers passing from domestic to international banks, and vice versa.

10. The New York Banks are either participants in the Clearing House Interbank Payments System (“CHIPS”), which is the largest private sector U.S. Dollar clearing system in the world,¹ the Federal Reserve’s Fedwire Fund Service (“Fedwire”), or a major participant in the clearing of international U.S. Dollar denominated transfers. A printout from TCH’s website providing a list of CHIPS participants is attached hereto as **Exhibit A**, and printouts of Fedwire’s website showing some of the New York Banks as Fedwire participants is attached hereto as

Exhibit B.

¹ <https://www.theclearinghouse.org/payment-systems/chips> (last visited March 3, 2020) (generally describing the CHIPS system).

11. Bank of America, N.A. (“BOA”) is a financial services institution that regularly transacts business in this District and maintains at least sixty-two (62) branches in New York City, including at 1680 Broadway, New York, NY 10019. Excerpts relevant to this Application from the Accuity Bank Directory, U.S. Dependencies, for December 2017-May 2018 are attached hereto as Exhibit C.² (Ex. C at p.72, listing BOA’s branches in New York City). BOA in New York City is a CHIPS and Fedwire participant. (Exs. A-B.) BOA in New York City acts as a worldwide correspondent bank for U.S. Dollar denominated wire transfers passing from domestic banks to international banks (and vice versa), including banks located in Hong Kong, the UAE and India³. Excerpts relevant to this Application from the Accuity Bank Directory, Worldwide Correspondents, for December 2017-May 2018⁴ are attached hereto as Exhibit D. Ex. D at pp.704-05, 710 (Hong Kong); pp. 718-22, 724 (India); pp. 1412, 1415, 1419 (UAE).

12. Citibank, N.A. (“Citibank”) is a financial services institution that regularly transacts business in this District and maintains its headquarters at 388 Greenwich Street, New York, New York 10013.⁵ Citibank in New York City is a CHIPS and Fedwire participant. (Exs. A-B.) Citibank in New York City acts as a worldwide correspondent bank for U.S. Dollar denominated wire transfers passing from domestic banks to international banks (and vice versa), including banks located in Hong Kong, India and the UAE. Ex. D at pp. 704-05 (Hong Kong); pp. 718-20, 722-24 (India); pp. 1413-15, 1417-19, 1421 (UAE).

² Should the Court need the entire volume, I will promptly provide it.

³ Wire transfers involving banks in Hong Kong, the UAE and India are relevant to the discovery sought as the Discovery Subjects and the Suppliers are believed to be based in those countries. (Fox Decl., ¶¶17-18).

⁴ This volume is the first Directory focusing exclusively on the worldwide correspondent services marketplace. The Directory provides essential information for performing interbank communications, funds transfers and other correspondent-related activities. Should the Court need the entire volume (of 1535 pages), I will promptly provide it.

⁵ <https://www.citigroup.com/citi/about/countries-and-jurisdictions/united-states-usa.html> (last visited March 3, 2020) (indicating the location of Citibank’s headquarters in New York City).

13. The Bank of New York Mellon (“BNY Mellon”) is a financial services institution that regularly transacts business in this District and maintains its headquarters at 240 Greenwich Street, New York, New York 10286.⁶ BNY Mellon in New York City is a CHIPS and Fedwire participant. (Exs. A-B.) BNY Mellon in New York City acts as a worldwide correspondent bank for U.S. Dollar denominated wire transfers passing from domestic banks to international banks (and vice versa), including banks located in Hong Kong, India and the UAE. Ex. D at pp. 705-06, 708-09 (Hong Kong); pp. 718-24 (India); pp. 1413, 1416-19, 1421-23 (UAE).

14. HSBC Bank USA, N.A. (“HSBC”) is a financial services institution that regularly transacts business in this District and maintains its headquarters at 452 5th Avenue, New York, New York 10018. HSBC in New York City is a CHIPS participant. (Ex. A.) HSBC in New York City acts as a worldwide correspondent bank for U.S. Dollar denominated wire transfers passing from domestic banks to international banks (and vice versa), including banks located in Hong Kong, India and the UAE. Ex. D at p. 707 (Hong Kong); pp. 718-20, 722-23 (India); pp. 1413, 1419 (UAE).

15. JP Morgan Chase Bank, N.A. (“JP Morgan”) is a financial services institution that regularly transacts business in this District and maintains its headquarters at 270 Park Avenue, New York, New York 10017. JP Morgan in New York City is a CHIPS and Fedwire participant. (Exs. A-B.) JP Morgan in New York City acts as a worldwide correspondent bank for U.S. Dollar denominated wire transfers passing from domestic banks to international banks (and vice versa), including banks located in Hong Kong, India and the UAE. Ex. D at pp. 704-06, 708-09 (Hong Kong); pp. 718-24 (India); pp. 1413, 1422 (UAE).

⁶ <https://www.bnymellon.com/us/en/contact.jsp> (last visited March 3, 2020) (indicating the location of BNY Mellon’s headquarters in New York City).

16. Bank of Nova Scotia is a financial institution that regularly transacts business in this District and maintains several branches including at 250 Vesey Street, New York, NY 10281.⁷ Bank of Nova Scotia in New York City is a CHIPS and Fedwire participant. (Exs. A-B.) Bank of Nova Scotia is also registered with the New York Department of Financial Services (“NYDFS.”) (Exhibit E.) Bank of Nova Scotia in New York City acts as a worldwide correspondent bank for U.S. Dollar denominated wire transfers passing from domestic banks to international banks (and vice versa).⁸

17. Barclays Bank PLC (“Barclays”) is a financial services institution that regularly transacts business in this District and maintains several branches in New York City including at 200 Park Avenue, New York, NY 10016. (Ex. C at p.73.) Barclays in New York City is a CHIPS and Fedwire participant. (Exs. A-B.) Barclays is also registered with the NYDFS. (Ex. E.) Barclays in New York City acts as a worldwide correspondent bank for U.S. Dollar denominated wire transfers passing from domestic banks to international banks (and vice versa).⁹ In fact, on December 18, 2018, Barclays in New York signed a consent order with the NYDFS under New York Banking Law §§ 39 and 44 relating to its U.S. Dollar clearing business in New York City.¹⁰

18. BNP Paribas USA (“BNP”) is a financial services institution that regularly transacts business in this District and maintains a branch at 787 7th Avenue, The Equitable

⁷ <https://www.scotiabank.com/global/en/country/united-states-of-america.html> (last visited March 3, 2020) (indicating the location of Bank of Nova Scotia in New York City).

⁸ <https://www.fdic.gov/regulations/reform/resplans/plans/bns-165-1812.pdf> (last visited March 3, 2020) (December 2018 Bank of Nova Scotia U.S. Resolution Plan Public Summary, generally describing Bank of Nova Scotia’s payment, clearing and settlement systems in the United States, including New York at pp. 3,8).

⁹ <https://www.fdic.gov/regulations/reform/resplans/plans/barclays-165-1807.pdf> (last visited March 3, 2020) (July 2018 Barclays U.S. Resolution Plan, generally describing Barclays’s US Dollar clearing activities in New York at p.38: “NYBR’s primary activities are deposit taking, lending, management of Barclays’s USD funding positions and US dollar clearing.”)

¹⁰ https://www.dfs.ny.gov/docs/about/ea/ea181218_barclays.pdf (last visited March 3, 2020) (see at ¶9 “Barclays operates a number of important business lines out of the New York Branch, including [...] management of Barclays’ U.S. dollar funding position and dollar payments clearing, settlement of foreign exchange trades in U.S. dollars, and corporate accounts.”)

Tower, New York, NY 10019. (Ex. C at p.73.) BNP in New York City is a CHIPS and Fedwire participant. (Exs. A-B.) BNP is also registered with the NYDSF (Ex. E.) BNP in New York City acts as a worldwide correspondent bank for U.S. Dollar denominated wire transfers passing from domestic banks to international banks (and vice versa).¹¹

19. Commerzbank AG (“Commerzbank”) is a financial services institution that regularly transact business in this District and maintains branches in New York City including at 225 Liberty Street, New York, NY 10281. (Ex. C. at p.76.) Commerzbank is a CHIPS and Fedwire participant. (Exs. A-B.) Commerzbank is also registered with the NYDSF. (Ex. E.) Commerzbank in New York City acts as a worldwide correspondent bank for U.S. Dollar denominated wire transfers passing from domestic banks to international banks (and vice versa).¹²

20. Deutsche Bank Trust Company Americas (“Deutsche Bank”) is a financial services institution that regularly transacts business in this District and maintains its head office at 60 Wall Street, New York, NY 10005.¹³ Deutsche Bank in New York City is a CHIPS and Fedwire participant. (Exs. A-B.) Deutsche Bank is also registered with the NYDFS. (Ex. E.) Deutsche Bank in New York City acts as a worldwide correspondent bank for U.S. Dollar denominated wire transfers passing from domestic banks to international banks (and vice versa), including banks located in Hong Kong, India and the UAE. Ex. D at p. 704 (Hong Kong); pp. 718-20, 722-23 (India); pp. 1415-17, 1420, 1423 (UAE).

¹¹ <https://www.federalreserve.gov/supervisionreg/resolution-plans/bnp-paribas-2g-20181231.pdf> (last visited March 3, 2020) (December 2018 BNP U.S. Resolution Plan, generally describing BNP’s US Dollar clearing activities in New York at pp.9,19: “the BNPP New York Branch acts as the U.S. dollar warehouse for the Group.”)

¹² <https://www.fdic.gov/regulations/reform/resplans/plans/commerzbank-165-1812.pdf> (last visited March 3, 2020) (December 2018 Commerzbank U.S. Resolution Plan, generally describing Commerzbank’s US Dollar clearing activities in New York at p.7).

¹³ <https://www.db.com/usa/content/en/Contact.html> (last visited March 3, 2020) (indicating the location of Deutsche Bank’s head office in New York City).

21. Société Générale, New York (“SGNY”), is a financial services institution that regularly transacts business in this District and maintains its head office at 245 Park Avenue, New York, NY 10167.¹⁴ SGNY is a CHIPS and Fedwire participant. (Exs. A-B.) SGNY is also registered with the NYDSF. (Ex. E.) SGNY acts as a worldwide correspondent bank for U.S. Dollar denominated wire transfers passing from domestic banks to international banks (and vice versa).¹⁵

22. Standard Chartered Bank (“SCB”) is a financial services institution that regularly transacts business in this District and maintains at least one branch in New York City at 1095 Avenue of the Americas, New York, NY 10036. (Ex. C at p.85). SCB in New York City is a CHIPS and Fedwire participant. (Exs. A-B.) SCB is also registered with the NYDFS. (Ex. E.) SCB in New York City acts as a worldwide correspondent bank for U.S. Dollar denominated wire transfers passing from domestic banks to international banks (and vice versa), including banks located in India and the UAE. Ex. D at pp. 718-21, 723 (India); pp. 1412-13, 1417-19, 1421-22 (UAE).

23. UBS AG (“UBS”) is a financial services institution that regularly transacts business in this District and maintains branches in New York City including at 299 Park Avenue, New York, NY 10017. (Ex. C p.86.) UBS in New York City is a CHIPS and Fedwire participant. (Exs. A-B.) UBS in New York acts as a worldwide correspondent bank for U.S. Dollar

¹⁴ <https://americas.societegenerale.com/en/locations/worldwide-details/office/societe-generale-branch-americas-securities-llc-locations/> (last visited March 3, 2020) (indicating the location of SGNY’s head office in New York City).

¹⁵ <https://www.federalreserve.gov/supervisionreg/resolution-plans/societe-generale-3g-20181231.pdf> (last visited March 3, 2020) (December 2018 Société Générale U.S. Resolution Plan, generally describing SGNY’s US Dollar clearing activities in New York at p.15).

denominated wire transfers passing from domestic banks to international banks (and vice versa).¹⁶

24. TCH provides both transmission of instruction messages and settlement of funds between financial institutions that are used to process international U.S. Dollar funds transfers made among international banks. TCH maintains its headquarters in New York City at 1114 Avenue of the Americas, New York, NY 10036. A printout of TCH's website indicating its headquarters in New York City is attached hereto as **Exhibit F**.

25. The one and a half-year temporal scope of the discovery sought here is likely within the Respondents' document retention policies. The Respondents keep electronic records of U.S. Dollar denominated wire transfers and are thus able to easily search and produce these records and have done so in response to dozens of subpoenas I have executed in connection with numerous domestic litigations, bankruptcy proceedings, and Section 1782 applications such as this.

26. The Respondents produce such records routinely and without significant cost or objection, and begin producing these records as early as two weeks after receipt of the subpoena.

27. This Court has repeatedly granted 1782 applications authorizing intermediary bank discovery from the Respondents, including but not limited to the applications identified in paragraphs 28 to 36 below.

28. *In re Application of Tianrui (International) Holding Company Limited*, 19-mc-545 (JMF) (S.D.N.Y. November 26, 2019) (Holding Section 1782's statutory requirements are met and authorized discovery from the New York Banks from whom discovery is sought here—

¹⁶ <https://www.fdic.gov/regulations/reform/resplans/plans/ubs-idi-1807.pdf> (last visited March 3, 2020) (July 2018 UBS U.S. Resolution Plan, generally describing UBS US Dollar clearing activities in New York at p.11.)

Citibank, BNY Mellon, HSBC, JP Morgan, SGNY, BNP, Barclays, Deutsche Bank, Bank of Nova Scotia, UBS AG, BOA, Standard Chartered Bank, Commerzbank AG—and TCH).

29. *In Re Application of Bloomfield Investments LLC*, 18-mc-514 (VSB) (S.D.N.Y. January 18, 2019) (holding that some of the New York Banks from whom discovery is sought here—Citibank, BNY Mellon, HSBC, JP Morgan, Barclays and BOA—“reside or are found in the Southern District of New York” based on the location of their head offices or branches in this District).

30. *In Re Application of Weatherford Oil Tool Middle East Ltd.*, 18-mc-412 (VEC) (S.D.N.Y. September 7, 2018) (holding that the New York Banks from whom discovery is sought here—Citibank, BNY Mellon, HSBC, JP Morgan, SGNY, BNP, Barclays, Deutsche Bank, Bank of Nova Scotia, UBS AG, BOA, Standard Chartered Bank, Commerzbank AG—and TCH “reside or are found in the Southern District of New York” based on their head offices or branches in this District).

31. *In Re Application of Thomas Forrest Austin Jr.*, 18-mc-321 (PGG) (S.D.N.Y. August 10, 2018) (holding that the New York Banks from whom discovery is sought here—Citibank, BNY Mellon, HSBC, JP Morgan, SGNY, BNP, Barclays, Deutsche Bank, Bank of Nova Scotia, UBS AG, BOA, Standard Chartered Bank, Commerzbank AG—and TCH “reside or are found in the Southern District of New York” based on their head offices or branches in this District).

32. *In Re Application of John Edmund Paylor, as Trustee in Bankruptcy of Junie Conrad Omari Bowers, as trustee in Bankruptcy of Andrew Nathaniel Skeene, and as Liquidator of Proximity Ventures Ltd. (in liquidation)*, (WHP) 17-mc-23 (S.D.N.Y. January 25, 2017) (holding that the New York Banks from whom discovery is sought here—Citibank, BNY

Mellon, HSBC, JP Morgan, SONY, BNP, Barclays, Deutsche Bank, Bank of Nova Scotia, UBS AG, BOA, Standard Chartered Bank, Commerzbank AG—and TCH “reside or are found in the Southern District of New York” based on their head offices or branches in this District).

33. *In Re Application of Carl Bowles and Robin Davis, as Trustees in Bankruptcy of Georgy Yurievich Trefilov*, 15-mc-221 (RA) (S.D.N.Y. July 23, 2015) (holding that the New York Banks from whom discovery is sought here—Citibank, BNY Mellon, HSBC, JP Morgan, SONY, BNP, Barclays, Deutsche Bank, Bank of Nova Scotia, UBS AG, BOA, Standard Chartered Bank and Commerzbank AG—“reside or are found in the Southern District of New York” based on their head offices or branches in this District).

34. *In Re Application of Lisa Arroyan*, 15-mc-94 (RWS) (S.D.N.Y. April 14, 2015) (holding that some of the New York Banks from whom discovery is sought here—Citibank, BNY Mellon, HSBC, JP Morgan, SONY, BNP, Barclays and BOA—“reside or are found in the Southern District of New York” based on their head offices or branches in this District).

35. *In Re Application of Novoship (UK) Limited, Cally Shipholdings Inc., Vital Shipping Corporation, Dainford Navigation Inc., Tamara Shipholdings S.A. and Tuscany Maritime S.A.*, 15-mc-72 (RMB) (S.D.N.Y. March 19, 2015) (holding that some of the New York Banks from whom discovery is sought here—Citibank, BNY Mellon, HSBC, JP Morgan, SONY, BNP, Barclays, BOA and UBS AG—“reside or are found in the Southern District of New York” based on their head offices or branches in this District).

36. *In Re Application of Mohammad Anwar Fared Al-Saleh*, 15-mc-55 (JSF) (S.D.N.Y. March 3, 2015) (holding that some of the New York Banks from whom discovery is sought here—Citibank, BNY Mellon, HSBC, JP Morgan, SONY, BNP, Barclays and BOA—

“reside or are found in the Southern District of New York” based on their head offices or branches in this District).

37. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: March 4, 2020

By: 
Michelle J. Martin

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